Supreme Court, U.S.
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No. 02-295

In the Supreme Court of the United States

WILLIAM E. GAGNON,

Petitioners,

v.

SPRINT CORPORATION, DBA SPRINT SPECTRUM L.P.;
SPRINT SPECTRUM FINANCE CORPORATION, DBA SPRINT PCS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Respondents Sprint Corporation, d/b/a Sprint Spectrum L.P. and Sprint Spectrum Finance Corporation, d/b/a Sprint PCS (collectively, "Sprint") request that the Court deny William Gagnon's Petition for Writ of Certiorari ("Petition"). Not only has Gagnon wholly misstated the record, the issues he requests this Court to review present no discord among the circuits, and do not warrant the rare invocation of the Court's judicial review power.

COUNTER-STATEMENT OF THE CASE

William Gagnon sued Sprint on July 20, 1999 in the United States District Court for the Western District of Missouri. Gagnon alleged the following claims: (1) reverse race and gender discrimination under Title VII, 42 U.S.C. § 2000 *et seq.*, and the Missouri Human Rights Act ("MHRA"); (2) retaliation under Title VII and the MHRA; and (3) discrimination and retaliation under the Uniform Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. § 4301 *et seq.* Gagnon and Sprint filed cross motions for summary judgment on Gagnon's USERRA claims. On January 4, 2001, the district court granted Sprint's motion for summary judgment. Petitioner's Appendix ("Pet. App.") 25-47. Gagnon's remaining Title VII and MHRA claims proceeded to trial on January 22, 2001. After the completion of Gagnon's case-in-chief, the district court entered judgment as a matter of law against Gagnon on his remaining claims.[1]

[1] The Eighth Circuit reversed the district court's ruling on Gagnon's Title VII / MHRA discrimination claim, holding that Gagnon presented "direct evidence" of discrimination triggering the *Price Waterhouse* / "mixed motives" analysis. This ruling by the Eighth Circuit exemplifies the mass confusion in the circuits as to

Among other issues, Gagnon appealed the district court's ruling on his USERRA claims. The Eighth Circuit affirmed summary judgment, but on different grounds than the district court. Pet. App. 14-20. Gagnon now asks this Court to review the Eighth Circuit's decision on his USERRA claims; however, in doing so, Gagnon has materially misstated the record. Sprint has highlighted these misstatements below, and set out an accurate synopsis of the pertinent facts and legal rulings.

I. Gagnon's Misstatement of the Record

Gagnon has misstated the record below in three material respects. First, Gagnon asks the Court to review a *summary judgment* ruling on his USERRA discrimination claims solely on the basis of the *trial record* in this case. Second, Gagnon has misrepresented the USERRA discrimination claim at issue before the lower courts. Third, Gagnon has exaggerated portions of the Eighth Circuit's ruling on his USERRA claims.

A. Gagnon's Misrepresentation of the Summary Judgment Record

In an effort to bolster his USERRA claims, Gagnon has ignored the record upon which the lower courts' based their decisions. The district court dismissed Gagnon's USERRA discrimination and retaliation claims upon cross motions for summary judgment. The Eighth Circuit affirmed that decision, albeit on different grounds. Gagnon's

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what it takes to trigger the "mixed motive" rubric, and is the subject of Sprint's Petition for Writ of Certiorari now pending with the Court.

USERRA claims never reached trial. Nevertheless, Gagnon's Petition relies *entirely* on the trial record from Gagnon's Title VII trial. Gagnon's strategic decision to ignore the summary judgment record is significant. Not only were the substantive legal claims at the summary judgment stage different than the trial stage, the "evidence" in the trial record was vastly different than the summary judgment record because the USERRA claims were not litigated at trial.

For example, Gagnon represents to the Court as a statement of fact in support of his USERRA claims that he "applied for approximately twenty different positions within Sprint and was not hired." *See* Petition, at p. 7. Gagnon did not proffer "evidence" of a single one of these jobs at the summary judgment stage. In fact, Gagnon's efforts to admit this evidence at trial was *rejected* by the district court, which recognized that Gagnon's repeated job applications were nothing more than Gagnon's litigation strategy to bolster his Title VII claims. Pet. App. 131. Gagnon did not preserve this ruling for appeal. Not only is Gagnon asking the Court to review a summary judgment ruling based upon the trial record, he is asking the Court to do so based on "evidence" excluded at trial.

As another example, Gagnon places great reliance on – and in fact recites the entire content of – an October 1997 e-mail addressing the diversity of skills and backgrounds of employees. *See* Petition, at p. 5. Gagnon argues that this e-mail somehow demonstrates USERRA discrimination against *him*. What Gagnon has failed to tell the Court is that the summary judgment record demonstrated that: (1) the author of the e-mail had no role in Gagnon's employment (which predated the e-mail by 7 months); (2) the author had no decision-making authority; and (3) Sprint hired both

candidates discussed in the e-mail. Respondents' Appendix Resp. App. 2a-3a.[2]

The district court and Eighth Circuit resolved Gagnon's USERRA claims on the basis of the summary judgment record, not the incomplete Title VII trial record recited in Gagnon's Petition. Gagnon's statement of the record is patently unreliable, and does not provide the Court with a factual foundation to assess the underpinnings of the lower courts' rulings.

B. Gagnon's Misrepresentation of His USERRA Discrimination Claim

Gagnon retired from the United States Army on January 31, 1997. Sprint hired Gagnon in April of 1997 as a curriculum developer, and paid him a base salary of $44,100 per year. As the basis for his USERRA discrimination claim before both the district court and Eighth Circuit, Gagnon claimed that Sprint paid him $1000 less than other curriculum developers because of his status as a military veteran. That was the sole USERRA discrimination claim presented to the courts below. Pet. App. 5, 15, 25, 29.[3]

In October 1997, Sprint promoted Gagnon to CBT (computer based training) manager, and awarded him a raise within company policy. Dissatisfied with his raise, Gagnon

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[2] The affidavits of Kathleen Wilder and Jim Keenan (cited *infra*) contained in Respondents' Appendix were part of the summary judgment record, and the facts from their affidavits cited in this brief were undisputed.

[3] The factual backdrop for this claim is discussed below. *See* Section II.

claimed that his raise upon promotion was the product of race and gender discrimination in violation of Title VII. This was one of the claims at issue in Gagnon's Title VII trial. Gagnon never claimed to the lower courts that his October 1997 raise constituted USERRA discrimination; consequently, the lower courts never addressed such a claim.

Apparently, Gagnon is now representing to this Court that his USERRA claim centered on the *October 1997* promotion / pay raise that Gagnon challenged in his Title VII trial. *See* Petition, at pp. 4-5, 16 n.2. As the Court can plainly see from the lower courts' decisions, Gagnon never made such a claim (or argument) in the summary judgment record.[4]

C. Gagnon's Misrepresentation of the Eighth Circuit's USERRA Ruling

At various points in his Petition, Gagnon suggests (without citation) that the Eighth Circuit found "direct evidence" of USERRA discrimination, and concluded that Sprint, in fact, discriminated against Gagnon because of his veteran status. *See* Petition, at p. 4, 8, 9, 16, 17. The Eighth Circuit never made such findings. In fact, the Eighth Circuit expressly ruled that it need not address the merits of Gagnon's

[4] To the extent that Gagnon is now trying to assert before this Court a new USERRA discrimination claim, the law is well settled that this Court will not consider a claim or argument that the Petitioner never raised in the courts below. *Ayer v. Robbins*, 519 U.S. 452, 464 (1997)(citation omitted).

USERRA discrimination allegations, because his claim was not covered by USERRA. Pet. App. 15-16.[5] The Eighth Circuit's ruling hardly constitutes a finding of discrimination.

II. Background of Gagnon's USERRA Claims

In his sole USERRA discrimination claim, Gagnon alleged that when he started his Sprint employment, Sprint hired him for $1000 less than Sprint paid other curriculum developers because of his veteran status. Pet. App. 5, 15, 25, 29. Gagnon's claim was both legally and factually infirm.

Sprint hired Gagnon as a curriculum developer in April 1997 at a base salary of $44,100 per year. Gagnon was the first veteran hired in his business unit. As a matter of undisputed fact, Sprint paid Gagnon as much as, and in some cases more than other curriculum developers. Resp. App. 2a, 5a-7a. Gagnon (military veteran), Jill Uland (non-military), and Ken Brantingham (non-military) started at $44,100. Joy Gish (non-military) started at $42,000. Stephen Elkins (non-military) started at $38,000. *Id.*

Given the objective facts regarding what Sprint paid its curriculum developers, why did Gagnon allege USERRA discrimination? More than a year after Gagnon was hired, Kathleen Wilder, his then supervisor, wrote a memo stating that Gagnon "was brought in about $1,000 less than his peers, based upon the lack of business experience." She wrote this without checking Gagnon's starting pay versus the pay of other curriculum developers, and submitted an affidavit in the summary judgment record acknowledging her mistake. Resp. App. 1a-2a. As demonstrated by the actual salaries of

[5] Sprint has quoted the pertinent holding of the Eighth Circuit below.

Gagnon and his peers, Wilder's memo was simply and objectively incorrect.

The summary judgment record further established that Wilder, the person whom Gagnon claimed discriminated against military veterans:

> •approved Gagnon's hiring with full knowledge of his veteran status;
>
> •supported Gagnon for the CBT manager position; and
>
> •approved the hiring of at least thirteen other military veterans in the same department as Gagnon during the same time period that she allegedly harbored an anti-veteran animus.

In summary, Gagnon twisted a mistaken comment by Wilder a year after he was hired into a discrimination lawsuit over an act that he knew never even occurred.

Gagnon's USERRA retaliation claim focused on a "written reminder" (a disciplinary memo) that Wilder issued to him in August 1998. Gagnon claimed that Wilder gave him the "written reminder" in retaliation for Gagnon's internal allegations to Sprint management that he was discriminated against because of his veteran status. The summary judgment record demonstrated otherwise.

In August 1998, Gagnon and Lynn Meredith-Ball, another manager in Gagnon's department, called a meeting with four subordinate employees outside of the Sprint workplace. Pet. App. 4-5, 29. Gagnon and Meredith-Ball told these employees, all of whom were military veterans, that

Wilder was uncomfortable with the number of veterans in her department, and would not promote anyone with a military background.[6] *Id.* Gagnon and Meredith-Ball further counseled these employees about job opportunities outside of Wilder's department. *Id.* After at least one of the employees complained about this meeting, Wilder fully investigated the matter. Each of the four employees whom Gagnon pulled out of the workplace provided statements as to what happened. As a result of the statements from the employees involved in the meeting, Wilder issued a "written reminder" to Gagnon and Meredith-Ball for their poor managerial judgment. *Id.* The only effect of the "written reminder" was that Gagnon and Meredith-Ball needed vice presidential approval before seeking promotions or transfers for a period of six months. *Id.*

In short, Gagnon received a "written reminder" because of the August 1998 incident, not because of prior complaints of military discrimination.

III. Disposition of Gagnon's USERRA Claims by the Lower Courts

The district court entered summary judgment on Gagnon's USERRA discrimination claim, finding that even if Sprint had paid Gagnon $1000 less than other curriculum developers, Sprint did not violate USERRA by making a pay decision based upon employees' relative experience and qualifications. Pet. App. 31-38. The district court further rejected Gagnon's USERRA retaliation claim, holding that purely internal complaints of veteran discrimination do not

[6] Gagnon said this despite the fact that Wilder supported his promotion less than a year earlier.

constitute "protected activity" under USERRA. Pet. App. 38-42.

The Eighth Circuit affirmed the district court's rulings, but on different grounds. With respect to Gagnon's USERRA discrimination claim, the Eighth Circuit concluded that it need not address the merits of Gagnon's allegations. Pet. App. 15-16. Based on the plain language of USERRA, the court held:

> In Gagnon's claim of discrimination under the USERRA, he asserts that because of his military background, he received a lower starting salary. The district court held that because Sprint PCS provided evidence of a factor other than Gagnon's military service to explain the disparity in his initial pay, Sprint PCS's motion for summary judgment was warranted. However, our inquiry does not carry us that far into the analysis. We find Gagnon fails to state a claim of discrimination under the USERRA. Gagnon has not been denied "initial employment, reemployment, retention in employment [or] promotion," as covered under section 4311(a). Thus, his only basis for a claim of discrimination under section 4311(a) is that Sprint PCS denied him a benefit of employment due to his prior service membership. Gagnon claims he was paid $1,000 less than his peers at Sprint PCS. The term "benefit," as defined by the USERRA, specifically excludes wages or salary for work performed. 38 U.S.C. § 4303(2).

> Thus, Gagnon has no basis for maintaining his claim of discrimination under the USERRA.

Id.

With respect to Gagnon's USERRA retaliation claim, the Eighth Circuit held that Gagnon did engage in "protected activity" under USERRA. The court nevertheless affirmed summary judgment, because Gagnon failed to present evidence that his internal complaints played any causal role in the issuance of the "written reminder." Pet. App. 16-20.

REASONS WHY THE WRIT SHOULD BE DENIED

Through his misstatements of the record, Gagnon has not provided an adequate foundation for the Court to properly assess the issues he challenges. For this reason alone, the Court should reject Gagnon's Petition. Notwithstanding Gagnon's confusion of the record, the issues Gagnon requests this Court to review do not warrant the rare invocation of the Court's judicial review power.

I. The Eighth Circuit's Decision Does Not Present a Conflict Between the Circuits on an Important Issue of Federal Law

A. USERRA Discrimination Claim

The Eighth Circuit's decision represents the first ruling by any court regarding whether USERRA's definition of "benefit" excludes "wages or salary for work performed" from its coverage. As the first and only ruling on this issue, this decision can hardly conflict with the decisions of any other court, state or federal, or with any decisions of this Court. *See* Sup. Ct. Rule 10; *Braxton v. United States*, 500

U.S. 344, 347 (1991)("A principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law."). Indeed, Gagnon does not claim such a conflict. Moreover, because this is the only case since USERRA's inception addressing this narrow issue, this case does not present a dispute among the courts on an important issue of federal law "that has not been, but should be, settled by this Court." Sup. Ct. Rule 10(c).

The Eighth Circuit merely applied Congress' plain language in the text of USERRA to the particular allegations of this case; narrow allegations the likes of which have not catalyzed a single other similar court decision in the history of USERRA. The USERRA discrimination issue raised by Gagnon – even if the Eighth Circuit had decided it incorrectly – does not warrant invocation of the Court's certiorari power.

B. USERRA Retaliation Claim

Again, Gagnon does not raise a conflict among the courts regarding USERRA's retaliation provision, as no conflict exists. The Eighth Circuit correctly ruled that Gagnon provided no evidence in the summary judgment record that his internal complaints played a causal role in the issuance of the August 1998 "written reminder." Gagnon concedes that the Court properly stated the legal standards of a USERRA retaliation claim. In essence, Gagnon is asking this Court to review the summary judgment record (which Gagnon did not even provide) to second-guess the Eighth Circuit's application of facts to a properly stated rule of law. This is not a proper ground for a writ of certiorari. *See* Sup. Ct. Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual

findings or the misapplication of a properly stated rule of law.").

As this Court has long held, it "do[es] not grant a certiorari to review evidence and discuss particular facts," *United States v. Johnston*, 268 U.S. 220, 227 (1925), for its "certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases." *Watt v. Alaska*, 451 U.S. 259, 275 (1981)(Stevens, J., concurring). *See also Ponte v. Real*, 471 U.S. 491, 501-02 (1985)(Stevens, J., concurring)("The merits of an isolated case have only an oblique relevance to the question whether a grant of certiorari is consistent with the sound administration of this Court's discretionary docket."). Gagnon's Petition on the retaliation issue fundamentally misapprehends the role of this Court, and should be summarily rejected.[7]

II. The Eighth Circuit's Decision on Gagnon's USERRA Discrimination Claim was Correct

In his USERRA discrimination claim, Gagnon alleged that Sprint: (1) paid him $1,000 less in salary than other curriculum developers when he started at Sprint; and (2) thereby denied him a "benefit" of employment, as that term is defined by USERRA. As an initial matter, Gagnon's claim is and always has been a red herring that fails under any analysis. The summary judgment record demonstrated, as a matter of undisputed and objective fact, that Gagnon was paid

[7] Because there is nothing unique about the Eighth Circuit's ruling to distinguish it from the hundreds, if not thousands, of opinions affirming summary judgment in retaliation cases due to a lack of causation evidence, Sprint is not further addressing this issue in this brief.

the same as or more than other curriculum developers when he started his job at Sprint. Notwithstanding this dispositive factual vacuum, the Eighth Circuit correctly interpreted USERRA.

A. USERRA's Plain Language Controls and Supports the Eighth Circuit's Decision

The plain language of USERRA defines "benefit, "benefit of employment," or "rights and benefits" as "any advantage, profit, privilege, gain, status, account, or interest ***(other than wages or salary for work performed)***" arising out of the employment relationship. 38 U.S.C. § 4303(2)(emphasis added). With the parenthetical, Congress plainly and unambiguously excluded wages and salary for work from the definition of "benefit."

Congress' exclusion of wages from the definition of "benefit" makes perfect sense. Had Congress included wages in the definition of "benefit," employers (and invariably, courts) would be required to make confusing value judgments translating a veteran's military experience into wage values in the private sector. There is nothing in USERRA's text or legislative history indicating that Congress intended for USERRA to have such far reaching, absurd consequences.

Despite USERRA's clear definition of "benefit," Gagnon contends that Congress actually meant to say in the parenthetical emphasized above, "other than wages or salary for work ***not*** performed." In other words, Gagnon argues that Congress intended to say something that is 180 degrees the opposite of what it actually said. Gagnon's request to the Court to rewrite the text of USERRA based upon inconsistent statements of legislative purpose misapprehends the Court's role in interpreting statutes.

"When interpreting a statute, [the Court] look[s] first and foremost to its text." *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 356 (1994). Ordinarily, the Court will not indulge an argument based on "legislative purpose" unless the Court of Appeals relied upon such an argument in its decision. *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 81 (1995). Of course, the Eighth Circuit did not do so here. The Eighth Circuit properly applied USERRA's plain language to Gagnon's allegations, and correctly affirmed summary judgment on Gagnon's USERRA discrimination claim.

B. The Totality of USERRA's Legislative History Supports the Eighth Circuit's Decision

Not only does Gagnon ignore USERRA's plain language, his legislative purpose argument is misguided. While the current version of USERRA became law in 1994, Congress' discussion over the provisions of USERRA commenced several years before. During the 102nd Congress in 1991, both the House and Senate developed the foundation for the current form of USERRA, including the definition of "benefit" at issue here. The House Report accompanying the 1991 House Bill contained the following definition:

> The term "benefit," or ""benefit of employment" means any aspect of the employment relationship, ***other than wages or salary for work performed***, provided by contract or employer practice or custom, that offers advantage, profit, privilege, gain, status, account, or interest and includes, but is not limited to, pension plans and payments, insurance coverage and awards, employee

> stock ownership plans, bonuses, severance pay, supplemental unemployment benefits, vacations, and selection of work hours or locations of employment.

H.R. Rep. 102-56, 102nd Cong. (May 9, 1991), 1991 WL 243411, at * 43 (emphasis added). The sectional analysis of this definition contained in the House Report accompanying the House Bill states that "benefit" was defined "broadly to include all attributes of the employment relationship provided by contract or employer custom and practice, ***other than wages for work performed***." *Id.* at * 55 (emphasis added).

Similar to the House Report, the Senate Report on the proposed USERRA in 1991 contains the following definition:

> The term "benefit," or ""benefit of employment" means any advantage, profit, privilege, gain, status, account, or interest that accrues by reason of an employment contract or an employer practice or custom ***(other than wages or salary for work performed)*** and includes rights under a pension or health plan, insurance coverage and awards, rights under an employee stock ownership plan, bonuses, severance pay, any supplemental unemployment benefit, an entitlement to leave with or without pay, work hours, and the location of employment.

S. Rep. 102-203, 102nd Cong. (Nov. 7, 1991), 1991 WL 243411 (emphasis added). In the discussion of this definition, the Senate Report states: "[The definition] would define 'benefit' or 'benefit of employment' as any advantage, profit, privilege, gain, status, account, or interest that accrues

by reason of an employment contract or an employer practice or custom ***(other than wages or salary for work performed)*** and include [sic] by way illustration the various attributes of the employment relationship that might be affected by an absence from employment." *Id.* (emphasis added).

The 102nd Congress did not pass USERRA, leaving it virtually complete and ripe for passage for the 103rd Congress. In 1993, the House and Senate each proposed bills to bring about the current version of USERRA – H.R. 995 and S. 843. The House Bill (and the corresponding House Report) that included the definition of "benefit" at issue here was passed in lieu of the Senate Bill. *See* Exhibit 3, U.S. Code Cong. and Admin. News Vol. 9, at p. 2449 (Dec. 1994). In line with the legislative history from both the House and Senate in 1991, the 1993 House Report excluded "wages or salary for work performed" from the definition at issue. *See* H.R. Rep. 103-65, 103rd Cong. (April 28, 1993), 1993 WL 235763, at * 2, 72-73.

The 1993 Senate Report accompanying Senate Bill 843 (not passed into law) contained a discussion of the proposed definitions for USERRA. This is the same discussion that Gagnon has highlighted to the Court in his Petition. In the discussion, the Report states: "New section 4303(2) would define 'benefit' or 'benefit of employment,' or 'rights and benefits' as any advantage, profit, privilege, gain, status, account, or interest ***(other than wages or salary for work <u>not</u> performed while absent from employment)*** . . ." *See* S. Rep. 103-158, 103rd Cong. (Oct. 18, 1993), 1993 WL 432576, at * 41 (emphasis added). This is the first and only reference in USERRA's legislative history dating back to 1991 intimating that the wage exclusion from the "benefit" definition is limited to wages for work *not* performed, as Gagnon suggests the law should be interpreted.

In summary, all of USERRA's legislative history from both the House and Senate dating back to 1991 corroborates the exclusion of wages for work performed from the definition of "benefit," except for one discussion in a Senate Report accompanying a Senate Bill that was not passed into law. The Eighth Circuit correctly refused to supplant USERRA's plain language and substantial legislative history with this single isolated comment.

C. USERRA's Remedial Scheme Does Not Conflict With the Eighth Circuit's Correct Interpretation of the Definition of "Benefit"

Gagnon points to USERRA's remedial scheme and its legislative history in arguing that USERRA expressly provides for lost wages as a remedy. Sprint agrees with Gagnon that USERRA's remedial scheme provides for lost wages in appropriate cases. However, Sprint does not agree with Gagnon's leap of logic that because USERRA provides for lost wage damages, the definition of "benefit" must necessarily include wages.

USERRA provides that a protected employee shall not be denied (1) initial employment; (2) reemployment; (3) retention in employment; or (4) any benefit of employment. 38 U.S.C. § 4311(a). Given this, USERRA's *exclusion* of wages and salary from the definition of "benefit" is perfectly consistent with USERRA's *inclusion* of lost wages in its remedial scheme. For example, if an employer violates category (1) by denying a military applicant initial employment, that person may very well suffer lost wage damages. If an employer violates category (2) by not reemploying a military employee, that person may very well suffer lost wage damages. If an employer fires a military employee in violation of category (3), that person may very

well suffer lost wage damages. Accordingly, Congress' exclusion of wages from the definition of "benefit" does not render the lost wage portion of its remedial scheme superfluous, as Gagnon suggests.

CONCLUSION

In light of Gagnon's failure to provide the necessary backdrop for the Court's certiorari consideration, the failure to raise a single issue warranting the Court's certiorari jurisdiction, and the propriety of the Eighth Circuit's rulings on the USERRA issues, Sprint requests that the Court deny Gagnon's Petition.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 99-0683-CV-W-1

WILLIAM E. GAGNON, Plaintiff,

v.

SPRINT CORPORATION, et al., Defendants.

AFFIDAVIT OF KATHLEEN WILDER

Kathleen Wilder, of lawful age, and upon her oath having been duly sworn, does testify as follows:

1. My name is Kathleen Wilder. I am making this affidavit in my capacity as a Director of Sprint PCS and upon my personal knowledge.

2. Attached to this affidavit as Exhibit "A" is a copy of Deposition Exhibit 4. This is a document which I prepared at the request of either the Human Resources Department or Ellen Martin of the Sprint PCS legal staff, to provide a narrative response to the allegations raised by Bill Gagnon in his initial charge of employment discrimination. As

best as I can recall, this document would have been drafted by me in the late May or early June, 1998 time frame, more than one year after Bill Gagnon was hired at Sprint.

3. This document was based upon my recollection of events that had occurred. It is my recollection that my files on Mr. Gagnon had already been forwarded to Ms. Martin by the time I prepared this document, so I did not have a chance to review them.

4. Mr. Gagnon was hired by Jim Keenan with my approval as Director. Mr. Keenan would have made a salary recommendation for Mr. Gagnon in conjunction with the Sprint PCS compensation group, and I would have approved that salary. Barbara Glover, who is discussed below, had no involvement in making the decision as to what Mr. Gagnon's compensation would be.

5. Having reviewed the salary information for those persons hired Curriculum Developers prior to Mr. Gagnon, and the Salary Worksheet for Mr. Gagnon (a copy of which as attached to this affidavit as Exhibit "B"), it is my belief that my comments in Deposition Exhibit 4 about Gagnon being paid less than his peers were inaccurate because Mr. Gagnon's salary was greater than that of Joy Gish and Stephen Elkins, who were also hired by Mr. Keenan, and the same as the starting salaries paid to Patricia Plumb, Jill Uland and Ken Brantingham, who were hired by Larry Snyder.

6. I have attached to my affidavit as Exhibit "C" a copy of an e-mail from Barbara Glover about some interviews that she did in October of 1997, The two individuals that Ms. Glover interviewed for my department

were Dale Coffman and Jerry Simonsen. Ms. Glover did not have authority to decide whether or not these individuals would be hired.

7. Both Dale Coffman and Jerry Simonsen had prior military experience before applying for jobs at Sprint PCS, and both were hired. In fact, Dale Coffman was hired in a managerial capacity.

8. Employees at Sprint PCS attend new-hire training, are provided with the Human Resource manual with Sprint PCS' EEO Statement, which contains contact information, and are required to complete the Sprint Principles of Business Conduct training, which also includes information about appropriate workplace conduct, and provides information on how to report inappropriate conduct, including an anonymous Helpline. In addition, management employees, such as Mr. Gagnon, complete a Human Resources Management class, which deals, in part, with how to handle alleged discrimination in the workplace.

This concludes my affidavit.

/s/_____
Kathleen Wilder

STATE OF MISSOURI)
) SS
COUNTY OF JACKSON)

On this 16th day of October, 2000, before me personally appeared, to me known to be the person described in and who executed the foregoing affidavit, and

acknowledged that she executed the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above written.

/s/_____
Notary Public

My Commission Expires:

"NOTARY SEAL"
Heather K. McNeely, Notary Public
Jackson County, State of Missouri
My Commission Expires 6/2/2001

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 99-0683-CV-W-1

WILLIAM E. GAGNON, Plaintiff,

v.

SPRINT CORPORATION, et al., Defendants.

AFFIDAVIT OF JIM KEENAN

Jim Keenan, of lawful age, and upon his oath having been duly sworn, does testify and aver as follows:

1. My name is James ('Jim') P. Keenan. I make this Affidavit in my capacity as a Manager of Sprint PCS and based upon my own knowledge and/or my review of the business records of Sprint PCS.

2. I was initially employed by Sprint PCS on November 5, 1996 as one of the original managers in the Training and Performance Support ('TAPS') Department under the direction of Kathleen Wilder.

3. At the time of my initial hire, I was the Manager over Systems Curriculum, and in that position, I was responsible for hiring the curriculum developers in my group. When the individuals were being hired for my group, I was the one who, in conjunction with the Human Resources Department, established starting wages for these employees.

4. Attached to my Affidavit is a copy of Deposition Exhibit 127, which is a salary worksheet and approval sheet which I prepared in connection with the employment of William E. Gagnon, Jr., and the recommendation for his salary. In making my recommendation, I considered fifteen years of Mr. Gagnon's experience in the military and outside the military to be related to the work in which he would be performing for Sprint PCS, and I gave him full credit for his Masters of Science Degree in Adult, Occupational and Continuing Education, even though that degree had not been awarded at the time of Mr. Gagnon's initial employment.

5. In determining the base compensation, the peers that were utilized in determining Mr. Gagnon's compensation were Joy Gish and Stephen Elkins, two individuals hired before Mr. Gagnon. Ms. Gish's salary was $42,000 and Mr. Elkins' was $38,000. The salary which I recommended for Mr. Gagnon, $44,100, was approved by the Compensation Group, Ms. Wilder and James Mendenhall, our Vice-President.

6. None of the other curriculum developers hired by Larry Snyder before Mr. Gagnon was hired by me was paid higher salary than was Mr. Gagnon. Of this group, the only former member of the military was Bill Gagnon. The

starting salary for these individuals are as follows:

William Gagnon, Jr.	$44,100
Jill Uland	$44,100
Ken Brantingham	$44,100
Stephen Elkins	$38,000
Joy Gish	$42,000

7. At the time I recommended Mr. Gagnon's starting salary of $44,100, I considered his military service to be an asset, not a liability, to his compensation. His prior military service did not result in a salary being established at $1,000 lower than that of his peers as is demonstrated by the paragraph above.

8. The salary recommendation I made for Mr. Gagnon, as reviewed by the Compensation Group at Sprint PCS, was approved without change or comment by Kathleen Wilder. I do not recall anyone in the compensation process making any comment about Mr Gagnon's military experience being a negative factor in his compensation.

This concludes my affidavit.

/s/_____
James Keenan

STATE OF)
) SS
COUNTY OF)

On this 12th day of October, 2000, before me personally appeared James Keenan, to me known to be the

person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above written.

/s/_____
Notary Public

My Commission Expires:

Lori A. Fischer
Jackson County
My Commission Expires
January 22, 2002